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CHARLES CLAUDE CHAPLEY
CLERK

Nos. 554-555

In the Supreme Court of the United States

OCTOBER TERM, 1942

NATIONAL BROADCASTING COMPANY, INC., AND
STROMBERG-CARLSON TELEPHONE MANUFACTUR-
ING COMPANY, APPELLANTS

v.

THE UNITED STATES OF AMERICA, FEDERAL COM-
MUNICATIONS COMMISSION, AND MUTUAL BROAD-
CASTING SYSTEM, INC., APPELLEES

COLUMBIA BROADCASTING SYSTEM, INC., APPELLANT

v.

THE UNITED STATES OF AMERICA, FEDERAL COM-
MUNICATIONS COMMISSION, AND MUTUAL BROAD-
CASTING SYSTEM, INC., APPELLEES

RESPONSE TO MOTION FOR TEMPORARY RESTRAINING
ORDER

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These suits were brought in a statutory three-judge district court to enjoin the enforcement of the Federal Communications Commission's regulations to radio stations engaged in chain broad-

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casting (NBC, R. 1-18; CBS, R. 1-12). The court below, on November 16, 1942, granted the Government's motions for summary judgment and dismissed the complaints (NBC, R. 522-532; CBS, R. 483-493). In dismissing the complaints, the court below issued an order restraining the enforcement of the regulations until February 1, 1943, or until argument of the appeal in this Court, whichever should be earlier (NBC, R. 532-534; CBS, R. 493-495). On January 19, 1943, the Commission adopted a minute suspending the effective date of the regulations under April 1, 1943, or the decision of this Court, whichever is earlier.

Appellants have now filed motions asking this Court to enter an order restraining the enforcement of the Commission's regulations until ten days after the filing of the mandate in the district court. By these motions, appellants seek three things which have not already been granted to them by the Commission's minute:

1. In the event this Court does not dispose of these appeals before April 1, 1943, they seek an order which will restrain enforcement of the Commission's regulations until the decision of this Court.

2. In the event the judgments are reversed, they desire to be protected by an injunction until the cases can be returned to the district court for further action.

3. In the event this Court affirms the decrees below, they seek a stay until 10 days after the filing in the court below of this Court's mandate, in order to give them "a reasonable opportunity to make whatever arrangements are necessary" with their affiliated stations.

We do not oppose appellants' request for a stay beyond April 1, 1943, in the event that these appeals are not decided by that date. Nor do we oppose the granting of a further stay hereafter if this Court should reverse the decrees of the court below.

We do, however, oppose appellants' request for a stay until ten days after the filing of this Court's mandate in the court below in the event that the judgments below are affirmed. The affirmance of the judgments below will constitute a holding by this Court that the Commission had authority under the statute to adopt the regulations, and that the regulations are valid. If appellants, in the face of such a holding, desire further time within which to comply with the regulations, we submit that the proper initial forum for such a request is the Federal Communications Commission.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.